



IN THE  
TENTH COURT OF APPEALS

No. 10-10-00297-CR

GREGG CARL BAIRD,

Appellant

v.

THE STATE OF TEXAS,

Appellee

From the 272nd District Court  
Brazos County, Texas  
Trial Court No. 09-02494-CRF-272

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ABATEMENT ORDER

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In this appeal, Appellant Gregg Baird has raised two issues: (1) the trial court abused its discretion by denying Baird's second amended motion to suppress evidence; and (2) the trial court abused its discretion by overruling objections to the admissibility of constitutionally protected conduct offered by the State as punishment evidence.

A copy of the trial court's certification of defendant's right of appeal is attached to this order. As to Baird's first issue, the certification states that this case "is a plea-bargain case, but matters were raised by written motion filed and ruled on before trial

and not withdrawn or waived, and the defendant has the right of appeal.”

As to Baird’s right to appeal the matter raised in his second issue, the Court notes that the certification is defective because it also states that the case “is not a plea-bargain case as to punishment, and the defendant has the right of appeal.” The record reflects that, for purposes of Rule of Appellate Procedure 25.2(a)(2), the case is a plea-bargain case—a charge bargain. See *Shankle v. State*, 119 S.W.3d 808, 813 (Tex. Crim. App. 2003); TEX. R. APP. P. 25.2(a)(2); see also *Kennedy v. State*, 297 S.W.3d 338, 341-42 (Tex. Crim. App. 2009). The record reflects that Baird pleaded guilty to ten counts and the State agreed that Penal Code section 12.45 would be applied to the remaining ninety counts.<sup>1</sup>

This defect must be cured by entry of an amended certification within 21 days after the date of this order, and this appeal is abated for that purpose. Cf. TEX. R. APP. P. 37.1. A supplemental clerk’s record containing the amended certification must be filed within 35 days after the date of this order. If this supplemental record is not filed within 35 days, the appeal will be referred to the Court for appropriate orders. *Id.* 37.1.

PER CURIAM

Before Chief Justice Gray,  
Justice Davis, and  
Justice Scoggins

Cause abated

Order issued and filed November 16, 2011

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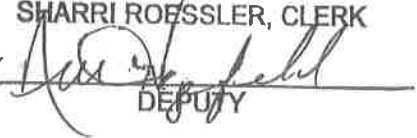
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<sup>1</sup> Based on the trial court’s apparent selection of and then scratching out of the certification’s third option (“Is a plea bargain case, but the trial court has given permission to appeal, and the defendant has the right of appeal.”) and its handwritten addition (“as to punishment”) to the certification’s first option, it appears that the trial court likely intended to give Baird permission to appeal from the punishment phase. Nevertheless, because this is a plea-bargain case, the certification is defective and must be amended.

THIS IS TO CERTIFY THAT THIS IS A  
TRUE AND CORRECT COPY.

TENTH COURT OF APPEALS  
SHARRI ROESSLER, CLERK

BY



DEPUTY

